IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2128 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)

Versus

CHHAGANBHAI NATHABHAI - Respondent(s)

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Appearance :
MR IM PANDYA AGP for Petitioner(s) : 1,
MRS DT SHAH for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 06/02/2006

ORAL JUDGMENT

1.This petition is directed against the award passed by the Labour Court, Surendranagar, in Reference (LCS)

No.252/94, whereby the Labour Court directed the petitioner to reinstate the respondent with 25% backwages.

2.The short facts of the case are that the respondent was working as a watchman on ad-hoc basis and his services were illegally terminated with effect from 26-9-91. Therefore, the respondent raised an industrial dispute. The said dispute was referred to Labour Court, Surengranagar, which passed the above award.

3.Heard learned counsel appearing for the respective parties.

4.Learned AGP Mr. Pandya for the petitioner has contended that the respondent himself has left the work and petitioner wrote number of letters to the respondent to join his duties, but respondent has not joined his duties and by notice dated 5-

7-94, the respondent has raised industrial dispute. He has further submitted that the Labour Court has committed an error in reinstating the petitioner and granting backwages.

5. On the other hand, learned advocate for the respondent has supported the award passed by the Labour Court.

6. So far as the contention regarding back-wages granted by the Labour Court is concerned, it has borne out from the record that the petitioner has not restrained the respondent, but the respondent himself has not reported for the duties.

7. However, while awarding back wages the Labour Court has not given any cogent and convincing reasons for grant of back wages. The back wages were given as a

matter of course. The law on the subject is well settled. In the case of Ram Ashrey Singh Vs. Ram Bux Singh, reported in (2003) II LLJ 176, it is held that the workman had no automatic entitlement to back wages since it is discretionary and has to be dealt with in accordance with facts and circumstances of each case. In the case of General Manager, Haryana Roadways Vs. Rudhan Singh, reported in JT 2005(6) SC 137 (=2005 (5) SCC 591), after referring to various decisions on the said subject, the Apex Court held that order for payment of back wages should not be passed in mechanical manner, but a host of factors are to be taken into consideration before passing any such order. Similar view has been taken in the cases of A.P. State Road Transport

Corporation and Ors. V. Abdul Kareem, reported in (2005)6 SCC 36, U.P.S.R.T.C. V. Mahendra Nath Tiwari & Anr. Reported in 2005 AIR SCW 6042 and U.P. State Brassware Corpn. Ltd. & Anr. V. Udai Narain Pandey, reported in 2005 AIR SCW 6314. In above view of the matter, I am of the opinion that the respondent cannot be said to be entitled for back wages.

8.In the result, the petition is partly allowed. The impugned award qua back wages is quashed and set aside. The award of reinstatement with continuity of service is confirmed. The award of the Labour Court is modified to the aforesaid extent. Rule is made absolute accordingly with no order as to costs.

(K.S.JHAVERI,J.)

*mithabhai